The Legislative Purpose, Value Orientation, and Reform of the Apparent Agency Doctrine

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Abstract. In contemporary society, civil and commercial transactions are increasingly complex, with frequent cases where counterparties' legitimate rights are harmed by unauthorized agencies. The apparent agency system is crucial for safeguarding transaction security and protecting bona fide counterparties' reliance interests. This paper explores related issues using literature review, data analysis, and logical reasoning: it argues the system prioritizes protecting reliance interests and transaction security, balances dynamic/static security and fairness/efficiency, identifies disputes over the principal's culpability, reasonable reliance standards and risk scope, and proposes improvements like clarifying criteria (such as determining the principle of culpability and refining factors for judging the reasonableness of reliance), optimizing burden of proof and expanding application (such as clarifying applicable rules in special circumstances like false seal defense, exceeding business scope, and actor's criminal act). The research aims to enhance the system's judicial application, stabilize legal relations, ensure transaction security and efficiency, and boost the healthy development of the market economy.

Keywords: Apparent Agency; Civil and Commercial Transactions; Transactional Security; Constituent Elements; Legislative Purpose.

1. Introduction

In today's civil and commercial activities, transactions have become more and more complex, with a wide range of participating parties and inherent information inequality. As market scales expand and transaction forms diversify, interactions between sides often involve complicated relationships and scattered information, making counterparties easily exposed to risks. Unauthorized agency acts—where people act without the principal's real permission but claim to represent them—have become increasingly common [1]. These acts often damage the legitimate rights and interests of bona fide counterparties and upset the stability of the transaction order. To solve this problem, the apparent agency system has become a key legal tool in civil and commercial law. Different from pure unauthorized agency, it focuses on the reasonable trust of bona fide counterparties: when someone acts without actual authorization, but the principal's behavior makes others reasonably believe they have authorization, the system requires the principal to be responsible for the agency act. This not only protects the reliance interests of innocent counterparties but also strengthens transaction security. It builds confidence in market activities by ensuring that reasonable expectations formed during transactions are protected by law. The legislative purpose of apparent agency is to balance fairness and efficiency, and to coordinate dynamic transaction security (protecting the smooth progress of ongoing transactions) with static rights security (safeguarding the principal's existing rights). However, academic debates still exist on core issues: the principal's liability (whether fault is necessary for being responsible), the standards to judge "reasonable reliance" (how to measure objective reasonableness), and the definition of the principal's risk scope (how much liability they should bear for unauthorized acts) [2]. These disputes show that we need an in-depth theoretical explanation to guide practical use. This paper aims to systematically study the apparent agency system. First, it sorts out the system's legislative purposes and value orientations. Then, it analyzes major academic debates on its constituent elements. Finally, it puts forward targeted ways to improve the system. Using comprehensive methods like literature analysis, logical reasoning, and case study, the paper tries to solve unresolved theoretical problems and provide clear analysis frameworks for practical difficulties. This research has great practical and theoretical value. It helps standardize the judicial application of apparent agency, ensuring consistent judgments in similar cases. It also improves the predictability of civil and commercial transactions, protecting the legitimate rights of all parties. In the end, maintaining an orderly and trustworthy transaction environment promotes the healthy development of the market economy.

2. Legislative Purpose and Value Orientation of the Apparent Agency System

2.1 Legislative Purpose of Apparent Agency System

Apparent agency refers to an unauthorized agency act where there are sufficient circumstances to make a third party believe the agent has actual authority. In such cases, even without real authorization, the law holds the principal liable to the third party as if the agent had been properly authorized. In early German commercial trials, disputes over apparent agency were mainly resolved through the doctrine of implied authorization. While this approach protected transactions, it violated the principal's true intent and failed to clarify the scope of implied authorization, thus facing widespread criticism. With the development of the commodity economy, the simplistic doctrine of will (focusing solely on the principal's actual intent) could no longer meet the needs of frequent civil transactions, exposing problems of inadequate institutional adaptability. The apparent agency system originated earliest in Germany. During the era of the Imperial German Higher Commercial Court, its application was concentrated in the commercial field, with the doctrine of implied authorization as the core solution [3]. Due to the inherent flaws of this doctrine and the increasing frequency of civil transactions driven by the commodity economy, the doctrine of will could not meet practical needs. The system then gradually evolved towards the doctrine of manifestation (emphasizing external conduct) and the principle of liability based on the appearance of authority, breaking away from the early framework that solely relied on the principal's inner will. Subsequently, this system was gradually recognized in the legislation or judicial practice of most countries and regions, and was first explicitly established in China's Contract Law. The core purpose of the apparent agency system is to protect the reliance interest of bona fide third parties and safeguard transaction security and order. By treating apparent agency (without real authorization) as authorized agency, the law does not intend to replace the principal's will with legal authorization, but to maintain a dynamic transaction order. Meanwhile, by requiring the principal to bear direct liability, it can not only protect the third party's reasonable reliance on the appearance of authority, but also consolidate the credibility of transaction security and the agency system itself, avoiding disruptions to transaction order caused by disputes over unauthorized agency.

2.2 Value Orientation of Apparent Agency System

The system of apparent agency originates from transactions and applies to situations where there is a discrepancy between the external manifestations (such as acts or rights) and the internal intentions or actual rights of the agent and principal. It is a legal arrangement where, for specific reasons, the law reluctantly confers legal effects based on the external appearance—especially the reasonable reliance on that appearance. From this, it can be seen that the system of apparent agency not only theoretically derives from the doctrine of right appearance but also absorbs the essence of the doctrine of appearance in terms of value orientation. According to the doctrine of appearance, the party who reasonably relies on a specific external appearance should be protected [4]. In other words, the theory of appearance holds that the legal order should protect the state of transaction based on reasonable reliance, even if the appearance is inconsistent with the real state of rights. As a result, the relevant legal consequences are deemed to have occurred or continue to exist for the protected party, placing them in a position consistent with what they reasonably believed to be true. Thus, the core value of the apparent agency system lies in protecting this reliance-based liability. In practice, protecting such reliance-based liability manifests as seeking a balance between dynamic security (transaction security) and static security (protection of the principal's interests), that is, balancing fairness and efficiency.

On one hand, protecting the reliance interests of bona fide third parties helps promote convenient and efficient transactions and safeguard the dynamic security of the market. If a third party had to spend substantial costs verifying the agent's authority in every transaction, it would seriously hinder the rapid flow of transactions and reduce market efficiency. On the other hand, the principal's interests cannot be completely ignored. It would be unfair to require the principal to be liable for unauthorized agency acts in all circumstances. To a certain extent, their right to decide on their own affairs and their interests should be protected from unwarranted infringement to maintain public security. For example, in some cases, if the principal is entirely without fault in the formation of the apparent authority and has no control over it, excessively holding them liable would violate the principle of fairness. Only by striking a balance between the two can the legal value of fairness and justice be realized, enabling the system of apparent agency to play a positive and reasonable role in the market economy, and promoting the effective allocation of resources and the healthy development of the economy.

3. The Constituent Elements and Theoretical Controversies of Apparent Agency

3.1 Theoretical Basis and Constitutive Elements

Canaris argues that the general elements of liability based on the appearance of authority include: the existence of the appearance of authority; the third party acting in good faith, being aware of the appearance, and acting based on reliance thereon; and the imputability of the party bearing liability.

With continuous development, combined with civil legislation and judicial practice, some scholars believe that the constitutive elements of the apparent agency system generally consist of five aspects: 1. The actor lacks the necessary authority when performing the agency act; 2. There exists an objective appearance of authority on the part of the actor; 3. The third party must reasonably and in good faith rely on the actor's authority, without knowing that the actor lacks the necessary authority to perform the agency act; 4. The third party enters into a civil legal act with the actor based on this good-faith reliance; 5. There is a direct causal relationship between the third party's good-faith reliance on the actor's apparent authority and the principal's acts (or omissions) that created such an appearance of authority. In judicial practice, it is relatively easy to determine whether the agency authority exists and whether the appearance of authority is present (for example, some scholars hold that the existence of authorized agency should be determined based on the external relationship between the principal and the third party; three scenarios—external existence but internal absence, external breadth exceeding internal scope, external retention but internal termination—all constitute authorized agency). However, three urgent issues need to be addressed: whether the principal is imputable, the vague standard of reasonable reliance, and how to define the scope of the principal's risk.

3.2 The Necessity of the Principal's Culpability

In the constitutive elements of apparent agency, there is intense controversy over whether the principal must be imputable, mainly involving two viewpoints: the single-element theory and the dual-element theory. The single-element theory holds that the establishment of apparent agency only requires the third party to rely on the agent's authority without negligence and does not demand fault on the part of the principal. In contrast, the dual-element theory argues that for apparent agency to be established, not only must the third party act in good faith and without negligence, but the principal must also be imputable for the occurrence of the apparent authority—such as cases involving fault, creating the appearance of authority, or failing to promptly eliminate it [5]. In fact, the dual-element theory is more reasonable, for the following reasons: Firstly, by analogy with the bona fide acquisition system, the dual-element theory of apparent agency is an inevitable choice for the right appearance system. Both bona fide acquisition and apparent agency are derivatives of liability based on the appearance of authority, adopting the method of protecting positive reliance, and sharing commonalities in risk allocation, interest balance, and imputability issues. Therefore, the value judgments in the norms of bona fide acquisition are also applicable to apparent agency. For example, bona fide acquisition applies to entrusted possession but not to non-entrusted possession (possession obtained without the owner's consent). The distinguishing criterion between the two lies in whether the party lost control of the property according to their own will. This example shows that the subjective factors of the parties are considered in the constitutive elements of bona fide acquisition. Thus, due to the similarity in the basic structure of apparent agency and bona fide acquisition, to avoid evaluative contradictions, the same value judgment should be considered in the constitution of apparent agency, including the principal's imputability. Secondly, the constraint of the principle of fairness. As a basic principle of civil law, the principle of fairness generally applies to all civil legal acts. The apparent agency system should inevitably seek a dynamic balance between transaction security and the principal's interests. If the principal's imputability is ignored, the principal's interests will inevitably be harmed, which violates the principle of fairness. Thirdly, the constraint of the principle of autonomy of will. The principle of autonomy of will is the cornerstone of civil law, occupying a core position among civil law principles. It embodies private law autonomy and civil law concepts, and is the most important and representative principle of civil law. The primary mission of civil law is to confirm and ensure the realization of the freedom of civil subjects. If the law forces the principal to be liable for acts lacking their own expression of will, it is clearly contrary to the principle of autonomy of will.

3.3 Ambiguity of the Reasonable Reliance Standard

Reasonable reliance is one of the key constitutive elements of apparent agency, but its current judgment standard is ambiguous. For third parties, there is no clear and definite definition of when reasonable reliance can be established. This leads to inconsistencies in judgments among different courts or judges in practice, affecting the uniformity and impartiality of justice. What exactly is reasonable reliance? Some scholars argue that it refers to the third party's subjective good faith and lack of negligence; others contend it means the objective existence of apparent authority. In my opinion, the two viewpoints above respectively represent the subjective and objective aspects of the reasonable reliance element. From an objective perspective, under normal circumstances, a third party will infer the actor has authority based on the principal's conduct, thus not needing to verify the authorization with the principal—this is the so-called apparent authority. Common scenarios of apparent authority include: the principal directly or indirectly indicating to the third party that the actor has authority; the actor holding documents proving agency authority; the principal knowing the actor is engaging in unauthorized agency but failing to deny it, etc. Subjectively, the third party must be in good faith and without negligence. In certain special cases, even if apparent authority exists, the third party in the specific case still needs to verify the existence of actual authority. However, this obligation to verify is not mandatory—only when there are particularities in identity, transaction method, nature, etc., does the third party bear a higher duty of care than ordinary people. Recently, many courts have strengthened the third party's duty of care. Such judicial decisions require third parties to verify transaction-related information as much as possible during transactions, which may discourage parties from choosing an agency to complete transactions and reduce transaction efficiency. This approach runs counter to the purpose of Laband's proposal of the abstraction principle of agency authority—to shape agency authority into a formalized transaction qualification, replacing the substantive review of whether authority exists.

3.4 Defining the Scope of the Principal's Risk

Determining the scope of risk is not a purely factual issue, but a combination of factual judgment and value consideration. Therefore, when defining the principal's risk scope, the following factors should be examined: Firstly, whether the principal created unnecessary risks. For example, if the principal arbitrarily lends their official seal or stamps it on blank contracts, enabling others to exploit these for unauthorized agency acts, the principal shall bear the resulting risks. This is because such conduct increases the likelihood of the apparent authority being abused, and the principal could have avoided such risks through prudent management of the official seal; thus, they should bear the corresponding consequences themselves. This is critical to determining the scope of risk. Secondly, compare who—between the principal and the third party—is more capable of controlling the risk of the apparent authority arising. If the apparent authority is caused by the principal's defective expression of authorization or notification, the principal has a greater chance to prevent the defect and should bear the risk; conversely, if the third party is more able to verify or detect problems with the authority but fails to fulfill a reasonable duty of care, the third party shall bear part of the risk. So it is crucial which side controls the risk. Thirdly, the principle of fairness also plays an important role in defining the risk scope. When it is difficult to clearly determine risk liability based on the above factors, it is necessary to consider which party bearing the risk is more in line with the principle of fairness. For example, when an employee engages in unauthorized agency acts by taking advantage of their position, since the principal benefits from the employment relationship and usually has certain management and supervision responsibilities over the employee, it may be more fair for the principal to bear the risk in accordance with the principle of consistency between benefits and risks; however, in certain special cases, if the third party knows or ought to know that the employee's act is problematic but still conducts the transaction, it may also be fair for the third party to bear part of the risk. Some scholars argue that in individual cases, due to the difficulty in applying the second factor and the ease of disputes, the first and third factors can be considered first, and the second factor only needs to be examined when these two are satisfied. Therefore, how and when to apply the principle of fairness to the definition of the scope of risk is very important. In short, comprehensive consideration should be given to: who is more likely to control the risk before it materializes; who should bear more responsibility after the risk materializes; who initiated the risk; who increased the risk; who is more capable of controlling the occurrence and escalation of the risk; who is more able to transfer the risk; and who benefits from the risk.

4. Reform Paths for Improving the Apparent Agency System

4.1 Clarifying the Criteria for Judging Constituent Elements

In the current apparent agency system, several reasons lead to unclear judgment standards in practice: Ambiguous definition of core elements—The subjective and objective standards for reasonable reliance lack unified delineation, and courts hold inconsistent standards regarding the third party's duty of care; Controversies over the imputation principle—Disagreements between the single-element theory and the dual-element theory; Complexity in defining the scope of risk—It is necessary to balance transaction security and the principal's interests, involving multiple factors.

Therefore, the standards should be clarified in accordance with the following principles: the principle of imputability; refinement of factors for reasonable reliance; and delineation of the causal relationship between acts and omissions.

Optimizing the Allocation of the Burden of Proof

The burden of proof refers to the risk of losing a lawsuit when the authenticity of essential facts is unclear. Discussing the allocation of the burden of proof in apparent agency means answering who shall bear the risk of losing the lawsuit when the authenticity of the essential facts of apparent agency remains uncertain. A reasonable allocation of the burden of proof is crucial to ensuring the fair trial of apparent agency cases [6]. In disputes over apparent agency, the burden of proof for all parties under different circumstances should be clarified to avoid unfair outcomes caused by an ambiguous burden of proof. The legislative purpose of apparent agency in China is to protect the bona fide third party's reasonable reliance on the appearance of authority. From here, we see that it is very important to optimize the allocation of the burden of proof. Therefore, to construct such reasonable reliance, the foundational elements—appearance of authority and the third party's lack of negligence—must be claimed and proven during the stage of establishing the right. Apparent agency protects the third party's reasonable reliance on the appearance of authority. Thus, without the appearance of authority, such reasonable reliance would have no basis, and the apparent agency system would lose its significance. The third party shall first bear a certain burden of proof regarding the appearance of authority, needing to prove the existence of such appearance—for example, by providing relevant evidence such as power of attorney, contracts, official seals, etc.—to initially demonstrate that they had reason to believe the actor had agency authority. For instance, in a contract dispute, the third party should present the contract text and the authorization information contained therein. So the determination of the burden of proof of the third party is the key and difficult point in the burden of proof. The third party's reasonable reliance (or their good faith and lack of negligence) is another essential element for establishing the right. In judicial practice, judges often examine the element of reasonable reliance to strengthen the credibility of the appearance of authority. Therefore, reasonable reliance becomes a foundational issue and naturally should be an essential element for establishing the right. The third party can prove this element by providing evidence, such as the reasonable basis for their decision-making during the transaction and the process of reasonably verifying the agent's identity and authority. For example, the third party can prove that before signing the contract, they properly inquired about the agent's identity, checked relevant supporting documents, and believed the agent had authority based on past experience and normal commercial judgment. So how to prove that one's own behavior is good faith and no fault is very important for the issue of burden of proof.

4.2 Expanding the Scope of Application in Special Circumstances

The current system does not clearly regulate special circumstances such as defense based on forged seals, exceeding the scope of business, and the actor's commission of a crime. Therefore, specific analysis should be conducted on some special issues: Regarding the defense based on forged seals, when a company employee uses a forged seal for transactions, it should not be arbitrarily determined whether apparent agency is established [7]. If the company has management loopholes—such as lacking strict norms for the custody and use of seals, enabling the employee to obtain and use the forged seal—and the third party reasonably believes the employee has authority during the transaction (e.g., the employee holds relevant company documents, based on past transaction practices, etc.), apparent agency may be considered established. However, if the company has taken reasonable measures to prevent seals from being forged or stolen, and the third party fails to fulfill basic due diligence in the transaction (e.g., not simply verifying the authenticity of the seal), apparent agency should not be easily recognized. Regarding the dispute over contracts exceeding the scope of business: For contracts that exceed the scope of business, if the third party reasonably believes the agent is authorized to sign such contracts (e.g., based on the company's promotion, understanding of its past business scope, etc.), and the principal's actions in the course of operation have fostered such reasonable reliance—such as not clearly opposing similar transactions or having acquiesced in relevant acts in the past—apparent agency may be considered applicable to a certain extent. This is also the specific application of the autonomy of will principle (everything not prohibited by law is permitted) in the apparent agency system. However, if the act of exceeding the scope of business clearly violates mandatory legal provisions, and the third party knows or ought to know the act is illegal, apparent agency shall not apply. Regarding the actor's commission of a crime: When the actor commits a crime, if there is a certain connection between the criminal act and the apparent agency act, specific analysis is required. If the third party is bona fide and without negligence in the transaction, and the criminal act does not alter the essence of the apparent authority that caused the third party's mistaken reliance—for example, although the actor is guilty of fraud, they presented seemingly authentic and valid authorization documents to the third party during the transaction, making the third party reasonably believe they have authority to conduct normal business—apparent agency may be applied to protect the third party's reliance interest [8]. However, if the criminal act fundamentally changes the nature of the transaction (e.g., fabricating transaction facts in contract fraud) and the third party has obvious fault in the transaction (e.g., insisting on proceeding despite knowing the transaction is unreasonable), apparent agency shall not apply.

5. Conclusion

The apparent agency system is of great significance in safeguarding transaction security and balancing the interests of all parties. However, the current system has some problems in terms of constitutive elements and application. In terms of constitutive elements: The principal's imputability should be judged comprehensively based on multiple factors, following the risk imputation principle and combining the characteristics of the commercial field to balance the third party's reliance interest and the principal's legitimate rights and interests. The judgment of reasonable reliance needs to clarify subjective and objective standards, comprehensively considering factors such as the credibility of the apparent authority and the third party's performance of the duty of care, so as to avoid judicial inconsistency caused by ambiguous standards. At the same time, the principal's risk scope should be reasonably defined, with a comprehensive analysis of elements such as risk creation, risk control, and the principle of fairness.

In the allocation of the burden of proof, the responsibilities of all parties should be clarified in accordance with normative purposes. Additionally, the burden of proving key facts should be reasonably shared based on the specific circumstances of the transaction. In terms of the scope of application, for special circumstances such as defense based on forged seals, exceeding the scope of business, and the actor's commission of a crime, prudent weighing is required to clarify specific applicable conditions and rules, prevent abuse of the system, and ensure fairness and reasonableness. By improving the apparent agency system, its operability and impartiality in judicial practice can be obviously enhanced, better adapting to the needs of the market economy's development, safeguarding market transaction order, and promoting the effective allocation of resources. This will realize the balance of the legal system between ensuring transaction security, respecting the parties' autonomy of will, and upholding the principle of fairness, thereby promoting the healthy and orderly development of China's economy.

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